IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 21019 of 2006(B)

PETITIONER:

A.U. BABY PAUL, ASSISTANT EDUCATIONAL OFFICER, HARIPAD, ALAPPUZHA DISTRICT.

BY ADV. SRI.R.RAJASEKHARAN PILLAI
SRI.M.S.NISHAD
SMT.SABINA JAYAN

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.**

3. **THE DEPARTMENTAL PROMOTION COMMITTEE FOR PROMOTION TO THE POST OF DEO, REPRESENTED BY THE 2ND RESPONDENT.**

4. **JOSEPH MARTIN .V., DEO, ERNAKULAM DISTRICT.**

5. **MOHAMMED SHAFI DEO, ALAPPUZHA DISTRICT.**

6. **HAMSA P., ADDL.DIRECTOR, PLANNING OFFICE OF THE DPI, THIRUVANANTHAPURAM.**

7. **MOHANAN. P.V., DEO, PALAKKAD DISTRICT.**

BY GOVERNMENT PLEADER SRI. P.A. SALIM for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON 21/03/2007 DELIVERED THE FOLLOWING:

WPC.NO.21019/2006 B

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE RELEVANT EXTRACT OF THE SENIORITY LIST OF H.S.As DATED 15/01/1999.**

EXT.P2: **COPY OF THE RELEVANT EXTRACT OF THE PROVISIONAL SENIORITY LIST OF Hms AND AEOs DATED JANUARY 2005.**

EXT.P3: **COPY OF THE REPRESENTATION/OBJECTION DATED 15/01/2005 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

EXT.P4: **COPY OF G.O.(RT) NO.2824/2006/G.EDN. DTD. 15/07/2006.**

EXT.P5: **COPY OF THE REPRESENTATION DATED 15/07/2006 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.**

EXT.P6: **COPY OF THE LETTER DATED 9/08/2006 FROM THE 2ND RESPONDENT.**

EXT.P7: **COPY OF THE SENIORITY LIST OF HSAs FOR THE PERIOD FROM 01/01/1976 TO 31/12/1976.**

EXT.P8: **COPY OF THE ORDER DATED 131/11/2006 OF THE FIRST \ RESPONDENT.**

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): **COPY OF THE SELECT LIST PUBLISHED VIDE G.O.(P) NO. 170/06/G.EDN. DATED 17/06/2006.**

EXT.R2(A): **COPY OF THE LIST OF CANDIDATES ADVISED FOR RECRUITMENT BY THE PSC DATED 16/12/1976.**

/TRUE COPY/

KSS

T.R. Ramachandran Nair, J.

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W.P.(C).NO.21019 of 2006-B

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Dated this the 21st day of March, 2007

JUDGMENT

The petitioner is working as Assistant Educational Officer under respondents 1 and 2. He is aggrieved by Exts.P2 to P7 as far as they affect adversely the seniority of the petitioner. There is a further prayer to direct respondents 1 and 2 to convene a review D.P.C. to consider the claim of the petitioner for promotion as District Educational Officer. The short facts of the case emerging from the pleadings are the following:

2. The petitioner was advised by the Public Service Commission for appointment as High School Assistant as per advice dated 26.6.1976 by the District Office of the Commission, Malappuram. He joined as H.S.A. (Maths) on 6.8.1976. He was promoted as Headmaster subsequently based on the seniority list of H.S.As. appointed between 1.1.1976 to 31.12.1976 (Ext.P1). The petitioner is serial No.160 in Ext.P1 and respondents 4 to 7 who, according to the petitioner, are his juniors, are serial Nos.161, 163, 172 and 174. Date of advice of all of them is 26.6.1976 and the petitioner was shown above as he is senior in age. He was promoted ahead of respondents 4 to 7 in the year 1999.

3. Subsequently, a provisional seniority list of Headmasters and Asst Educational Officers was published and Ext.P2 is the relevant extract of the said list. In the said list respondents 4 to 7 were shown as seniors to the petitioner and aggrieved by the said action, he submitted objections to the said list. It is the case of the petitioner that he did not get a proper response even though his objections have been filed in time and he has got a further grievance that he was superseded for further promotion to the post of District Educational Officer. He found to his dismay that the Departmental Promotion Committee did not consider his name for promotion, whereas by order dated 5.7.2006 respondents 4 to 7 have been promoted. Ext.P4 is the order granting promotion to respondents 4 to 7. Projecting his grievances against the same, he filed a further representation before the second respondent produced as Ext.P5. The petitioner has a further grievance that in Ext.P2 provisional seniority list of Headmasters and Asst. Educational Officers, his serial number is shown as 166 whereas, respondents 4 to 7 have been shown above him, which is unjust and illegal.

4. After the writ petition was filed, the petitioner was served with Ext.P6, a reply issued by the Director of Public Instruction informing him that in the final seniority list of High School Assistants, his rank is 175. He was also informed that the provisional seniority list relied upon by the

petitioner was fianlised after rectifying the anomalies, on 29.4.2000 on which date the final seniority list was published. It has also been informed that the ranking of respondents 4 to7 are 115, 121, 122 and 126. The second respondent therefore informed him that the promotions granted based on the above ranking, is proper and there is no merit in his objections. With much efforts, the petitioner obtained Ext.P7 seniority list which according to him, is an incorrect one. The petitioner is challenging Ext.P7 on various grounds.

6. It is seriously contended by the petitioner that Ext.P7 seniority list has not been circulated or published and its existence is disclosed only after the filing of the writ petition and after he moved the concerned authority under the Right to Information Act. It is also contended that there are various anomalies in Ext.P7 which would show that it is a fabricated one. The petitioner points out various infirmities in the said list in paragraph 8 and ground B of the writ petition. Therefore, the petitioner maintains that going by his seniority in Ext.P1 and because of the infirmities in Ext.P7, Ext.P7 has to be ignored and he should be granted promotion based on Ext.P1.

7. A counter affidavit has been filed on behalf of the second respondent. The stand taken in the counter affidavit is that Ext.P1 seniority

list is a provisional seniority list of High School Assistants for the period from 1.1.1976 to 31.12.1976. The above provisional seniority list was finalised after settling all the objections filed by the High School Assistants as per order No.SY1-78563/93/DPI dated 29.4.2000 The petitioner's name was placed at serial No.175 and that of respondents 4 to 7 at serial Nos. 122, 121, 126 and 115 respectively in the said list. It is submitted that time was taken to finalise the provisional list as so many objections were received. But since there were several vacancies of Headmasters and Assistant Educational Officers during the period from 15.1.1999 to 29.4.2000, promotions had to be made as otherwise it would have adversely affected the functions of the Government High Schools and Offices of the Asst. Educational Officers. It is stated that all the promotions effected from the provisional seniority list has been reviewed and regularised based on the final seniority list and as per order No.D4-94410/04/DPI dated 2.12.2004 the provisional seniority list of Headmasters/Assistant Educational Officers for the period from 1.4.1996 to 31.3.2002 had been published and the petitioner's name was placed at serial No.166 and that of respondents 4 to 7 at serial Nos.135, 134, 138 and 132 respectively. The second respondent also pointed out that the representation submitted by the petitioner had been duly disposed of finding that he is not eligible to be placed rank and

seniority over respondents 4 to 7. It is also stated in the counter affidavit that in the Departmental Promotion Committee held on 30.5.2006 the Headmasters/Asst. Educational Officers ranked from 28 to 165 were included in the field of choice. The D.P.C. approved a select list of 30 Headmasters and Asst. Educational Officers and serial Nos. upto 23 were promoted as District Educational Officer. The second respondent justifies the finalisation of the seniority list and further states that since the petitioner is far junior, his name could not be included in the field of choice. Ext.R2 (a) is the select list published in the Gazette after the meeting of the D.P.C.

8. When the matter was heard on 21.2.2007, an interim order was passed directing the second respondent to file an additional affidavit providing specific answers to certain contentions raised by the petitioner and to explain how and why the second respondent found that the petitioner is not eligible to be placed rank and seniority over respondents 4 to 7. Accordingly, an additional counter affidavit has been filed by the second respondent. In the said affidavit, the second respondent has explained the reasons for considering the petitioner as junior to respondents 4 to 7. It is stated in paragraph 4 of the additional counter affidavit that the rank assigned by the Public Service Commission while publishing the list of candidates selected for appointment in the category of HSA (Physical

Science) in respect of the petitioner was very lower than respondents 4 to 7.. It is stated that serial numbers of respondents 4 to 7 are 54, 53, 63 and 41 respectively in the said list and that of the petitioner is 175. Therefore, it is stated that the petitioner is not eligible to get rank and seniority over and above respondents 4 to 7. Ext.R2(a) is the rank list published by the Public Service Commission. It is stated that Ext.R2(a) was relied upon to examine the objections to the provisional seniority list.

9. The petitioner has filed an affidavit disputing the statements and averments contained in the additional counter affidavit.

10. Shri R. Rajasekharan Pillai, learned counsel for the petitioner strongly contended that the whole exercise said to have been made by the second respondent is suspicious. According to the counsel, Ext.P7 does not show that the objections, if any, of anybody have been considered. It is further stated that the principles for finalising the provisional seniority list has not even been referred to in Ext.P7. It is stated that Ext.P7 has never seen light before and was kept as a secret document in the office of the Director of Public Instruction, obviously. It was never published and therefore it has to be ignored. Counsel also submits that going by sub para 9 of paragraph 3 of Ext.P1, the principles to be adopted for finalising the seniority list have been clearly stated and the same could not have been

given a go bye while finalising a provisional seniority list. It is therefore argued that the whole thing is a mistery and the attempt is only to deny the valuable right for promotion of the petitioner as District Educational Officer. It is also stated at the Bar that the petitioner is retiring on 31.3.2007.

11. I am afraid, the contentions raised by the counsel are not correct in the light of the facts stated in the additional counter affidavit. Even though the counsel strongly contended that Ext.R2(a) cannot be relied upon, I find that the said contention has no force. Ext.R2(a) is the list of candidates advised for recruitment by the Public Service Commission District Office, Malappuram, published in the Gazette dated 7.6.1977. Ext.R2(a) will show that the petitioner is serial No.172, whereas serial numbers of respondents 4 to 7 are 54, 53, 63 and 41 respectively. The second respondent has obviously relied upon the rank assigned by the Public Service Commission while publishing the advice list for finalising the provisional seniority list. The said method adopted by the second respondent is perfectly in accordance with the general rules. The petitioner could not dispute the ranking in Ext.R2(a) by producing any material as evidence to support his contentions. In the absence of any such material produced by the petitioner to dispute the correctness of Ext.R2(a), I find

that Ext.R2(a) has been correctly relied upon by the second respondent for finalising the seniority list. Even though the petitioner states that Ext.P7 document had never come to light, without any further materials, this court will not be justified in ignoring Ext.P7 merely on the basis of the assertions made by the petitioner. It is true that in the body of Ext.P7 there are no references to the names of objectors or details regarding the objections and other materials as to how the objections have considered for finalising the list. But in the light of the averments in the additional counter affidavit, any alleged defects in Ext.P7 will not improve the case of the petitioner. Therefore, even though counsel for the petitioner strongly contended for the position that Ext.P7 should be quashed for want of sufficient information from it, I refrain from doing so since that will not advance the case of the petitioner to its logical conclusions. If Ext.P7 is quashed, then again the matter will have to be remitted to the second respondent for fresh consideration. By that time the petitioner will retire from service. Apart from that, all the affected persons are not made parties herein and quashing of Ext.P7 will affect the rights of innumerable persons whose names find a place in the same. Even though respondents 4 to 7 have been impleaded as party respondents, they have not been impleaded in a representative capacity also. Therefore, the said argument of the counsel is only to be

rejected and I do so. Going by the averments in the additional counter affidavit, the petitioner's rank is only 175 in the advice list Ext.R2(a) and obviously respondents 4 to 7 are arrayed as 54, 53, 63 and 41 respectively in the said list. Hence, the assignment of their seniority above him cannot be faulted. Since the second respondent has produced materials to support the ranking given to the petitioner in Ext.P7 list, I find that there is no infirmity in the ranking given to the petitioner as serial No.166 in Ext.P7.

12. Before concluding, I must observe that Ext.P7 actually does not contain any details regarding the principles followed in publishing the final list. Parties are entitled to know their position in it and as to how the same was determined, rather than driving them to desperation and litigation. Even though two office orders dated 15.1.1999 and 23.2.2000 are referred to in Ext.P7, the contents of them are not disclosed. The names of persons who have filed objections, details of such objections and the manner in which they have been dealt with, are absent in Ext.P7. Since the finalisation of the seniority list is bound to have impact on the rank number, etc. of the persons included, the second respondent should have avoided further complaints. But as I have found earlier, even if some infirmities are there,

Ext.P7 is not liable to be quashed in view of the circumstances stated already.

Hence, the writ petition fails and the same is dismissed. No costs.

(T.R. Ramachandran Nair, Judge.)

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